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No. 82-472

In the Supreme Court of the United States

OCTOBER TERM, 1982

JOSEPH C. RUSSELLO, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether profits and proceeds derived from racketeering activity constitute an "interest" within the meaning of 18 U.S.C. 1963(a)(1) and are therefore subject to forfeiture.

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OPINIONS BELOW

The opinion of the en banc court of appeals (J.A. 77-109) is reported at 681 F.2d 952. The panel opinion is reported at 648 F.2d 367.[1]

JURISDICTION

The judgment of the en banc court of appeals (J.A. 100) was entered on August 2, 1982. The petition for a writ of certiorari was filed on September 9, 1982, and granted on January 10, 1983 (J.A. 110). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

The relevant statutory provisions are set forth in an appendix to this brief.

[1] The portion of the panel opinion relating to the forfeiture issue (J.A. 64-69) appeared in the advance sheets (648 F.2d at 407-409) but was deleted after rehearing was granted.

STATEMENT

After a jury trial in the United States District Court for the Middle District of Florida, petitioner and 15 others were convicted of racketeering, conspiracy, and mail fraud, in violation of 18 U.S.C. 1341, 1962(c) and (d). After returning the verdicts on the criminal charges, the jury returned special verdicts requiring the forfeiture, pursuant to 18 U.S.C. 1963(a), of four payments made to petitioner by his insurance company, totalling $340,043.09 (J.A. 54-57).[2] The district court then entered a judgment of forfeiture against petitioner in that sum (*id.* at 58-60). A panel of the court of appeals affirmed petitioner's convictions but reversed the forfeiture (*id.* at 64-69).[3] The full court thereupon ordered rehearing en banc on the forfeiture issue and vacated that portion of the panel opinion (*id.* at 73-74). The en banc court then affirmed the district court's judgment of forfeiture (*id.* at 77-109).

1. The proof at trial is described in the opinions of the panel (648 F.2d 367, 378-380, 409-411 (1981); J.A. 69-72) and the en banc court (681 F.2d 952, 953 (1982); J.A. 80-81). The evidence established that petitioner and his co-defendants formed an association-in-fact that operated in Tampa and Miami, Florida, from 1973 to 1976 and engaged in numerous acts of arson for the purpose of defrauding insurance companies. In the beginning, the arsonists

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[2] These verdicts related to count two of the indictment (J.A. 37-47).

[3] The panel affirmed petitioner's convictions on two counts of mail fraud, conspiracy to violate the RICO statute, and a substantive RICO violation (*United States* v. *Martino*, 648 F.2d 367 (5th Cir. 1981)), and this Court denied certiorari, No. 81-1485 (Apr. 26, 1982).

set fire to buildings already owned by those associated with the enterprise. The owners then filed inflated proof of loss statements, collected the insurance proceeds, and made payments to other members of the arson ring. Later, ring members purchased buildings, obtained insurance in excess of the buildings' value, and after the arson took place, submitted insurance claims and divided the proceeds. One member of the ring was a corrupt insurance adjuster who processed fire loss claims even though he knew that the fires had been deliberately set. He also directed ring members to insurance agencies where they could obtain fire insurance in excess of the value of substandard buildings. Several of those associated with the enterprise were responsible for setting the fires. Others, including a realtor, located property to be bought and burned and also arranged loans for the purchase of such buildings.

Petitioner was the owner of the Central Professional Building in Tampa. His building consisted of two sections—an original, smaller section in the front and a newer addition in the rear. The rear, which was completed in the summer of 1975, contained apartments, offices, and parking facilities. Petitioner arranged for two arsonists to set fire to the front portion of the building. He intended to use the insurance proceeds to rebuild that section, which was less profitable than the newer, rear part of the building (50 Tr. 250; 56 Tr. 96-97). Contrary to his plan, however, the fire spread to the rear of the building and endangered the lives of several tenants who worked and resided there (50 Tr. 272, 273; 67 Tr. 24, 53; 74 Tr. 32-35, 54-58, 63-67). Joseph Carter, another member of the arson ring, was the insurance adjustor for petitioner's claim and helped petitioner to obtain the highest payment possible. Petitioner col-

lected $340,043.09 in insurance proceeds and paid Carter $30,000 for his assistance (50 Tr. 276; 56 Tr. 104-107).

2. In initially reversing the judgment of forfeiture (J.A. 64-69), a panel of the court of appeals found that "Congress did not intend to include in the forfeiture provision of § 1963 the fruits and profits obtained from a pattern of racketeering activity" (*id.* at 67). The en banc court of appeals disagreed and reinstated the forfeitures (*id.* at 77-109).

The en banc court first noted (J.A. 81-83) that racketeering profits fall within the plain meaning of Section 1963(a)(1), which calls for the forfeiture of "any interest * * * acquired or maintained in violation of section 1962." Rejecting the argument that Congress intended to reach only interests in an enterprise, the court noted (J.A. 82) that such a limitation was omitted from Section 1963(a)(1) but was expressly included in other provisions of the statute, including Section 1963(a)(2).

The court found support for its interpretation in legislative history showing that Congress intended to create a broad forfeiture penalty and to remove the profit from organized crime (J.A. 87-95). From the congressional debates, the court concluded (*id.* at 90) that "the target of Congress'[s] attack included racketeering operations in which the chief type of property interest obtained by organized crime would be something other than an ownership or proprietary interest." The court cited references to the very type of activity involved in this case—arson committed for purposes of insurance fraud—as well as references to narcotics trafficking, loan sharking, extortion, gambling, and prostitution (*id.* at 90-91). The court also noted Congress's expressed desire to combat organized crime's practice of infiltrating and then "bleed[ing]" the assets of legitimate businesses (*id.* at 90).

The court observed (J.A. 91) that unless racketeering profits were subject to forfeiture, the forfeiture provisions would be of little use in combating enterprises devoted exclusively to criminal ends, since such enterprises seldom issue stock or hold property in their own names. The court found further support for its interpretation in the fact that, "after extensive legislative work," Congress adopted Section 1963(a) in its present form rather than an earlier version that reached only interests in an enterprise (J.A. 92-93).

Acknowledging that its decision conflicted with *United States* v. *Marubeni America Corp.*, 611 F.2d 763 (9th Cir. 1980), the court explained why it disagreed with *Marubeni*'s reasoning. The *Marubeni* court relied upon Section 1962(a), which makes it a crime to invest racketeering income in enterprises engaged in or affecting interstate commerce. Since that provision contains an exception for most open-market purchases of not more than 1% of an enterprise's stock, the Ninth Circuit reasoned (611 F.2d at 767) that "Congress would not have established rules for the investment of racketeering income, enforced by the penalty of criminal forfeiture, if it intended the government to seize that income regardless of how it was used." Rejecting this analysis, the court in this case found (J.A. 96-97) no inconsistency between the decision not to criminalize such investments and the intent to make such ill-gotten gain nevertheless subject to forfeiture.

The *Marubeni* court also relied (611 F.2d at 766 n.7) upon 21 U.S.C. 848(a)(2)(A), which was enacted at approximately the same time as 18 U.S.C. 1963 and expressly provides for the forfeiture of "profits" from certain illegal drug-related activities. The court of appeals in the present case observed that Congress might well have used the more specific term

"profits" in 21 U.S.C. 848(a)(2)(A) because drug dealing "typically involves cash transactions" (J.A. 97-98). By contrast, the court reasoned (*id.* at 98), since the fruits of racketeering may take a greater variety of forms, use of the more general term "interest" was entirely appropriate.

The dissenters agreed with petitioner that Section 1963(a)(1) is restricted to interests in an enterprise. Beginning from the premise (J.A. 101) that "historically our society has abhorred forfeitures," they contended that the scope of Section 1963(a)(1) "is to be most charily assessed." They argued (J.A. 103) that Section 1963(a)(1) relates to interests in a business acquired or maintained in violation of Section 1962(a) and (b), while Section 1963(a)(2) "relates primarily to an interest in an enterprise which is involved in conduct violative of § 1962(c)." They also relied (J.A. 104) upon the fact that in other provisions of the RICO statute the term "interest" is expressly limited to interests in an enterprise. And they found support for their interpretation in portions of the legislative history (*id.* at 105-106) and in Congress's use of the term "profits" in 21 U.S.C. 848(a)(2) (J.A. 107).

SUMMARY OF ARGUMENT

The issue in this case is whether profits and proceeds derived from racketeering constitute an "interest" within the meaning of 18 U.S.C. 1963(a)(1) and are thus subject to criminal forfeiture. Despite the congressional mandate that the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. (& Supp. V) 1961-1968, is to be liberally construed by the courts to effectuate its broad remedial purposes, and the undeniable fact that forfeiture of racketeering booty is one of the most promising means of

discouraging the kinds of organized criminal activity at which the statute seeks to strike, the dissenters below nevertheless erected their analysis on the premise that our society abhors forfeitures, and therefore that forfeiture provisions are to be strictly and narrowly construed (J.A. 101). Whatever truth there may have been to this maxim in the past, it is plain that over the last 15 years Congress has come increasingly to view forfeitures as an essential weapon in the battle against crime. It would therefore be more apt today to say that forfeitures are a preferred means of combatting criminal activity. Putting aside the overriding hostility to forfeitures that colored the dissent's view of the scope of Section 1963(a)(1), it becomes clear from the plain meaning of that provision and its structure and legislative history that forfeitures of racketeering proceeds are authorized.

1. Section 1963(a)(1) provides without qualification that upon conviction a racketeer must forfeit "*any interest* he has acquired or maintained in violation of section 1962" (emphasis added). Racketeering profits and proceeds fall within the ordinary meaning of "any interest" and are therefore forfeitable. The term interest has been defined as "[t]he most general term that can be employed to denote a right, claim, title or legal share in something" (*Black's Law Dictionary* 729 (rev. 5th ed. 1979)). Consistent with that definition, this Court's decisions concerning the meaning of the word "property" in the Due Process Clause make clear that the term interest comprehends all types of real and personal property, as well as other forms and sources of wealth and power. This Court has stated that " '*property' denotes a broad range of interests* that are secured by 'existing rules or understanding' " (*Perry* v. *Sindermann*, 408 U.S. 593, 601 (1972) (emphasis added)),

and has also observed (*Board of Regents* v. *Roth*, 408 U.S. 564, 571-572 (1972) (emphasis added; footnote omitted)) that "*the property interests* protected by procedural due process *extend well beyond actual ownership of real estate, chattels, or money.*" Congress undoubtedly employed the term "interest" in Section 1963(a)(1), rather than using the term "property" or attempting to enumerate all those things subject to forfeiture, because it wanted to strike as broadly as possible at the illicit fruits of racketeering.

Petitioner has not attempted to define an "interest" but insists that the term is limited to an interest in an enterprise because " '[i]nterest', by definition, includes of necessity an interest in something" (Pet. Br. 9). This argument is fallacious. It is customary to speak of an interest in something in order to distinguish between the interest—which denotes rights, privileges, powers, and immunities—and the physical object or other thing to which those attributes pertain. Thus, a person with racketeering profits or proceeds always has an interest in something, *i.e.*, currency, a bank account, or something else of value.

That Congress intended "interest" to encompass all traditional forms of property is illustrated by the congressional hearings, debates, and reports, in which the terms "interest" and "property" were repeatedly used synonymously.

2. Other portions of the RICO statute also show that forfeiture of racketeering profits and proceeds was intended. While Section 1963(a)(1) speaks broadly of "any interest * * * acquired or maintained in violation of section 1962," Section 1963(a)(2) reaches only "any interest *in* * * * *any enterprise* which [the defendant] has established operated, controlled, conducted, or participated in the conduct of,

in violation of section 1962" (emphasis added). If Congress had intended to restrict Section 1962(a)(1) to interests in an enterprise, it would presumably have done so expressly, as it did in Section 1963(a)(2). The use of different language in the two subsections indicates unmistakably that a different meaning was intended, especially since both subsections evolved from proposed legislation containing a single forfeiture provision limited to interests in an enterprise.

Our interpretation of Section 1963(a)(1) is also supported by the RICO statute's definition of the term "enterprise," which encompasses both legal entities and illegitimate associations-in-fact. It is rarely possible to identify an interest in an illegitimate enterprise, but persons associated with such organizations customarily receive illegal profits or proceeds. Thus, unless racketeering profits and proceeds are forfeitable, illegitimate enterprises will be effectively excluded from the reach of the RICO forfeiture provision—something that Congress can hardly have intended. Conversely, when a formal enterprise such as a corporation is enriched by racketeering activity, forfeiture of the owner's stock carries with it a forfeiture of the proceeds of the illicit activity; consequently, the forfeiture provision, even as narrowly construed by petitioner, will ordinarily entail some forfeiture of racketeering profits.

Petitioner's interpretation of the forfeiture provision is not supported by Section 1962(a), which makes it a separate crime "to use or invest" racketeering income to acquire an interest in, establish, or operate an interstate business. While certain relatively small purchases of securities are exempted from this provision, it does not follow, as the Ninth Circuit concluded in *Marubeni*, that Congress did not intend

to require the forfeiture of racketeering proceeds. It was completely consistent for Congress to require forfeiture of racketeering profits and proceeds while also providing that under certain circumstances the investment of such moneys is not a separate crime.

Nor is petitioner's argument supported by 21 U.S.C. 848(a)(2), a contemporaneously enacted provision requiring the forfeiture of "profits" derived from a continuing criminal enterprise engaged in drug-related activities. The broad term "interest" was undoubtedly employed in 18 U.S.C. 1963(a)(1) because of the RICO statute's wide intended scope, while the narrower term "profits" was used in 21 U.S.C. 848(a)(2) because the fruits of illegal drug activities are usually cash.

3. The legislative history of the RICO statute confirms that Congress intended to reach racketeering profits and proceeds. For example, Senator McClellan, the statute's chief sponsor, stated that the forfeiture provision was intended to take racketeers' "ill-gotten gains" (see, *e.g.*, 115 Cong. Rec. 9951 (1969); 116 Cong. Rec. 591-592 (1970)). Similarly, the House Report (H.R. Rep. No. 91-1549, 91st Cong., 2d Sess. 57 (1970) (hereinafter "House Report")) stated that the provision extends to "all property and interests, as broadly defined, which are related to the violations."

Although Congress certainly wanted to require forfeiture of racketeers' interests in businesses they had infiltrated, Congress's broader objective was to strike at the source of organized crime's wealth and hence its power. Congress recognized that organized crime thrives on its huge illegal income from activities such as drug distribution, gambling, and extortion. Without attacking the profits and proceeds flowing from such activities, Congress's goal of eradicating organ-

ized crime would be seriously undermined. In enacting the RICO statute, Congress sought to create new, potent remedies to achieve its objective and directed that the statute "be liberally construed to effectuate its remedial purposes" (84 Stat. 947). Construing Section 1963(a)(1) so as to prevent forfeiture of racketeering profits and proceeds would contravene this unequivocal directive and frustrate Congress's intent.

ARGUMENT

PROFITS AND PROCEEDS DERIVED FROM RACKETEERING ARE SUBJECT TO FORFEITURE UNDER 18 U.S.C. 1963(a)(1)

The sole issue in this case is whether profits and proceeds derived from racketeering constitute an "interest" within the meaning of 18 U.S.C. 1963(a)(1) and are thus subject to forfeiture. Here, the judgment of forfeiture required petitioner to disgorge some $340,000 that he obtained by submitting fraudulent insurance claims for property destroyed by a fire that he and other members of an arson ring had conspired to set. Petitioner contends (Br. 5-36) that Section 1963(a) reaches only "interests in an enterprise" and does not permit the forfeiture of "profits and proceeds." And, like the dissenters below (J.A. 106-107), petitioner premises his argument (Br. 5-6) upon the proposition that criminal forfeitures are disfavored and that forfeiture statutes must therefore be strictly construed.

Not only is that argument contrary to Congress's express directive that the RICO statute "be liberally construed to effectuate its remedial purpose" (84 Stat. 947, 18 U.S.C. 1961 note), but it ignores the fact that during the past 15 years Congress has come increasingly to view forfeitures as an essential weapon in

the battle against crime. During that period, Congress has enacted at least three other major statutes authorizing the forfeiture of money used in or derived from illegal activity. See 18 U.S.C. 1955(d) (illegal gambling businesses); 21 U.S.C. 848(a)(2) (continuing criminal enterprise); 21 U.S.C. 881(a) (controlled substances violations). And as petitioner himself points out (Br. 8-9), the states have emulated Congress's model. Thus, whatever the view once held of criminal forfeitures, there is no basis for arguing that the Congress that enacted Section 1963(a)(1) viewed criminal forfeitures with disfavor or intended the reach of that provision to be narrowly confined. In any event, petitioner's interpretation of Section 1963(a)(1) is inconsistent with the statutory language and Congress's expressed intent and would significantly hinder achievement of one of the principal aims of the RICO statute—destruction of organized crime's economic base.

A. The Plain Language of 18 U.S.C. 1963(a)(1) Requires the Forfeiture of "Any Interest" Derived From Racketeering and Thus Encompasses Racketeering Profits and Proceeds

"In determining the scope of a statute, [courts] look first to its language. If the statutory language is unambiguous, in the absence of a 'clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.'" *United States* v. *Turkette*, 452 U.S. 576, 580 (1981) (citation omitted). See also *Dickerson* v. *New Banner Institute, Inc.*, No. 81-1180 (Feb. 23, 1983), slip op. 7; *Rubin* v. *United States*, 449 U.S. 424, 429-431 & n.8 (1981); *Lewis* v. *United States*, 445 U.S. 55, 60 (1980). Here, 18 U.S.C. 1963(a)(1) requires the forfeiture of "any interest * * * acquired * * * in

violation of section 1962." There is no question that petitioner acquired the proceeds at issue in violation of Section 1962(c). Accordingly, if those proceeds constitute "any interest," they are forfeitable under Section 1963(a)(1).

1. The term "interest" is not defined by the RICO statute, undoubtedly because Congress intended that term to carry its usual meaning. See *Richards* v. *United States*, 369 U.S. 1, 9 (1962); *United States* v. *Snider*, 502 F.2d 645, 651 (4th Cir. 1974); *Hardy Salt Co.* v. *Southern Pacific Transportation Co.*, 501 F.2d 1156, 1168 (10th Cir. 1974); *Heli-Coil Co.* v. *Webster*, 352 F.2d 156, 157 (3d Cir. 1965). And, as the court below noted (J.A. 83), the ordinary meaning of the term "interest" encompasses the concept of profits or proceeds. *Webster's Third New International Dictionary* 1178 (1976) defines "interest" as, among other things, a "good," "benefit," or "profit." Similarly, *The Random House Dictionary of the English Language, Unabridged* (1979), defines interest to include "profit," "welfare," or "benefit." *Black's Law Dictionary* 729 (rev. 5th ed. 1979) (emphasis added) states that "interest" is "[*t*]*he most general term that can be employed* to denote a right, claim, title or legal share in something." In the *Restatement of Property* § 5 (1936) the word "interest" is said to denote any combination of "rights, privileges, powers and immunities" with regard to land or other things. See also 1 R. Powell, *The Law of Real Property* ¶ 96, at 367-368 (1977). Explaining its use of the term "interest," the *Restatement of Property* § 5 comment a (1936) observes that "[t]here is no corresponding term in common use" that has a similar scope. It then defines "real property" as any of several "interests in land" (*id.* § 8) and an "owner" as a "per-

son who has one or more interests" (*id.* § 10). Personal property has likewise been defined as "the right or *interest* which a person has in things personal" (emphasis added) (63 Am. Jur. 2d *Property* § 22, at 309 (1972)).

Also defining property as a collection of "interests," a leading treatise states (1 G. Thompson, *Commentaries on the Modern Real Property* § 5, at 25-27 (1980) (footnotes omitted; emphasis added)):

> Property is a term of broad significance, embracing * * * *every interest* or estate which the law regards of sufficient value for judicial recognition. The word may be properly used to signify *any valuable right or interest* protected by law. * * *
>
> * * * * *
>
> The term * * * extends to *every species of valuable right and interest*, including real and personal property, easements, franchises and other incorporeal heriditaments.

In sum, whatever else is denoted by the term "interest," it undoubtedly comprehends all forms of real and personal property, including profits and proceeds.

This Court has repeatedly relied upon the term "interest" in defining the meaning of "property" in the Due Process Clause. For example in *Perry* v. *Sindermann*, 408 U.S. 593, 601 (1972) (emphasis added), the Court wrote that "'*property interests*' * * * are not limited by a few rigid, technical forms. *Rather, 'property' denotes a broad range of interests* that are secured by 'existing rules or understandings.'" See also, *e.g.*, *Logan* v. *Zimmerman Brush*

Co., 455 U.S. 422, 430 (1982) (emphasis added), quoting *National Mutual Insurance Co.* v. *Tidewater Transfer Co.*, 337 U.S. 582, 646 (1949) (Frankfurter, J., dissenting) ("the types of *interests* protected as '*property*' are varied and, as often as not, intangible, relating 'to the whole domain of social and economic fact' "); *Jago* v. *Van Curen*, 454 U.S. 14, 17-18 (1981); *Memphis Light, Gas & Water Division* v. *Craft*, 436 U.S. 1, 9 (1978); *Bishop* v. *Wood*, 426 U.S. 341, 344 & n.7 (1976); *Paul* v. *Davis*, 424 U.S. 693, 709 (1976); *Arnett* v. *Kennedy*, 416 U.S. 134, 155 (1974) (emphasis added) ("The types of 'liberty' and 'property' protected by the Due Process Clause vary widely, and what may be required under that Clause in dealing with one set of *interests* which it protects may not be required in dealing with another set of *interests.*"); *Board of Regents* v. *Roth*, 408 U.S. 564, 569, 571-572 (1972) (emphasis added; footnote omitted) ("The requirements of procedural due process apply only to the deprivation of *interests* encompassed by the Fourteenth Amendment's protection of liberty and property. * * * * * The Court has * * * made clear that the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money.").

It was undoubtedly because Congress did not want the RICO forfeiture provision to be limited by "rigid, technical" (*Perry* v. *Sindermann*, *supra*, 408 U.S. at 601) definitions drawn from other areas of law that it selected the broad term "interest" to describe those things subject to forfeiture under Section 1963(a)(1). If, for example, Congress had employed the term "property"—the term used in several of the state racketeering statutes to which petitioner points (Br. 8-9)—the scope of Section 1963(a)(1) would

have been significantly reduced. Petitioner implicitly acknowledges this point because, while insisting that Section 1963(a)(1) is limited to interests in an enterprise, he acknowledges (Br. 10, 18-19) that such interests may include not only property in the narrow sense, but other sources of wealth and control, such as offices or positions.

Attempting to find "[t]he most general term that can be employed" (*Black's Law Dictionary* 729 (rev. 5th Ed. 1979)), Congress therefore selected the term "interest." This choice of language was fully consistent with the pattern of the RICO statute, which repeatedly seeks to achieve its far-reaching purposes by shunning terms with restricted legal meanings and instead utilizing broad new terms and concepts—such as the concept of an "enterprise" (18 U.S.C. 1961(4)); the very concept of "racketeering activity" (18 U.S.C. (Supp. V) 1961(1)), which is defined as embracing numerous predicate offenses; and the concept of "conduc[ting] or participat[ing] * * * in the conduct of such enterprise's affairs through a pattern of racketeering activity" (18 U.S.C. 1962(c)).

Because "[t]here is no corresponding term in common use" (*Restatement of Property* § 5 comment a at 9 (1936)), Congress's only alternative to the use of the term "interest" would have been a painstaking enumeration of the specific things subject to forfeiture. This is the approach taken in some of the bills recently introduced in Congress to reverse *Marubeni* and similar district court decisions (see S. 2320, 97th Cong., 2d Sess. § 101 (1982); Pet. Br. App. 12-13). When the RICO statute was enacted, however, Congress had no way of anticipating such decisions and, without the knowledge subsequently gained in RICO investigations and prosecutions,

Congress may have been hesitant to attempt to compile an exhaustive list of things subject to forfeiture. Wishing to strike broadly at the fruits of racketeering, Congress therefore selected the term "interest," the broadest term at its disposal.

2. Like the *Marubeni* court, petitioner has not attempted to define the term "interest."[4] Petitioner insists (Br. 9), however, that the term does not reach profits and proceeds because " '[i]nterest', by definition, includes of necessity an interest in something." Petitioner then asserts (*ibid.*) that the interests included within the scope of Section 1963(a)(1) must consequently be interests in an enterprise. This argument is plainly invalid. Every property interest, including the ownership of or right to receive profits or proceeds, may be described as an interest in something. Before the profits of an illegal enterprise are divided, each participant may be said to own an "interest" in the ill-gotten gain. After distribution, each participant will have a possessory or ownership interest in currency, valuables, a bank account, stocks, bonds, or the like. Thus profits and

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[4] Two district courts have stated that an

> "interest" is akin to a continuing proprietary right in the nature of a partnership or stock ownership (or holding a debt or claim, as distinguished from "equity" investment) rather than mere dividends or distributed profits.

United States v. *Thevis*, 474 F. Supp. 134, 142 (N.D. Ga. 1979); *United States* v. *Meyers*, 432 F. Supp. 456, 461 (W.D. Pa. 1977). No authority was given for this definition, and in light of the sources noted above we believe it is artificially narrow. Furthermore, even if it were one acceptable definition of an "interest," a court engaging in statutory interpretation need not adopt the narrowest possible meaning of a plain and ordinary word. *Turkette*, *supra*, 452 U.S. at 587 n.10; *United States* v. *Brown*, 333 U.S. 18, 25-26 (1948). Rather, words should be given their "fair meaning in accord with the

proceeds do constitute an "interest in something."[5] If, however, petitioner means to suggest that an "interest" must denote something less than sole ownership, he is clearly wrong. For example, a sole proprietorship is clearly an "interest" in a business even though the sole proprietor owns the entire business. Similarly, a fee simple absolute not subject to any mortgage or lien could certainly be described as an "interest" in real estate. See *Restatement of Property* §§ 8, 14 (1936). And ownership of a car, furniture, or other personal belongings that have been fully paid for may accurately be described as a personal property "interest." In short, it is clear that profits or proceeds, whether in currency or some other form, fall squarely within the plain meaning of the term "interest."

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manifest intent of the lawmakers." *Id.* at 26. Here, the court of appeals' construction of the term "interest" is far more consistent with the usual meaning of that term and with Congress's clear intent.

[5] It is customary to speak of an interest *in* something in order to draw a distinction between the interest, which denotes "varying aggregates of rights, privileges, powers and immunities" (*Restatement of Property* § 5 (1936)), and the physical object or other thing to which those rights, privileges, powers, and immunities pertain. As one treatise puts it (1 G. Thompson, *supra*, § 5, at 29-30 (emphasis added)):

> [The term property] has a very wide significance and includes *every class of acquisition which one can own or have an interest* in. * * * The property, or subject matter of ownership, is to be thought of as one thing, and the *interest* or estate *therein*, as another. So, in another sense, the term is employed to indicate *the interest which can be acquired* in external objects or things.

Thus, a person with racketeering proceeds always has an interest in something, *i.e.*, rights, privileges, powers, or immunities with respect to cash, a bank account, or something else of value.

3. The accepted broad meaning of the term "interest" is fully consistent with the way that term was used in the congressional hearings, debates, and reports on the RICO statute. While members of Congress often spoke of forfeiting racketeers' interests in enterprises, the term "interest" was just as frequently used as a synonym for "property." Senator Hruska, a co-sponsor of Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 941 *et seq.*, the present RICO statute, repeatedly referred to Title IX's attack on the "property interests" of organized crime (*e.g.*, 116 Cong. Rec. 602 (1970)). Senator Byrd noted that "convictions alone * * * do not attack the vested property interests" of organized crime (*id.* at 607). Senator Dole similarly remarked that racketeering convictions by themselves are insufficient since they "do not reach the property interests of the enterprise" (*id* at 39296).

The House Report on the Organized Crime Control Act stated that "violations [of Section 1962] shall be punished by forfeiture to the United States of *all property and interests, as broadly described*, which are related to the violations." House Report, *supra*, at 57 (emphasis added). Congressman Poff, the chief sponsor of the House version of the RICO statute, stated that Title IX would allow criminal forfeiture of "the property interests involved in the violations" (116 Cong. Rec. 35295 (1970)). Representatives Conyers, Mikva, and Ryan, in their dissenting report, criticized the criminal forfeiture provision's "potential scope for deprivation of property" (see House Report, *supra*, at 188).

Witnesses before Congress likewise spoke of organized crime's "property" as the interest that would be subject to forfeiture. A report prepared by the

Association of the Bar of the City of New York explained that the statute required "forfeiture of property acquired or maintained in violation of the Section" (*Hearings on S. 30 Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 91st Cong., 2d Sess. 328 (1970) (hereinafter "*House Hearings*")). A statement submitted by the American Civil Liberties Union objected to Title IX because a convicted defendant could be "required to forfeit all property acquired through the prohibited activity" (*id.* at 499). See also 116 Cong. Rec. 854 (1970). The Committee on Federal Legislation of the New York County Lawyers' Association criticized the breadth of the criminal forfeiture provision, stating that upon conviction a racketeer's "assets" could be forfeited "insofar as they can be vaguely related to" the unlawful activity (*House Hearings*, *supra*, at 402). These statements confirm the view that the term "interest" was used to denote all property interests. What other things may be subject to forfeiture under Section 1963(a)(1) need not be decided here.

B. Forfeiture of Racketeering Profits and Proceeds Under Section 1963(a)(1) is Supported by Other Provisions of the RICO Statute and Is Entirely Consistent With Other Forfeiture Provisions

While devoting little attention to the language of 18 U.S.C. 1963(a)(1), petitioner and the lower courts that have accepted his construction of that provision have relied heavily upon other portions of the RICO statute and upon other forfeiture laws. In our view, however, the court of appeals' interpretation of Section 1963(a)(1) is supported by the overall structure of the RICO statute and is not in any way undermined by other forfeiture provisions.

1. Like the court below (J.A. 82), we believe that petitioner's contention that Section 1963(a)(1) is limited to interests in an enterprise is plainly refuted by the language of Section 1963(a)(2). While Section 1963(a)(1) speaks broadly of "any interest * * * acquired or maintained in violation of section 1962," Section 1963(a)(2) reaches only "any interest *in* * * * *any enterprise* which [the defendant] has established[,] operated, controlled, conducted, or participated in the conduct of, in violation of section 1962" (emphasis added). Similar language appears in Sections 1962(b) and 1964(a). "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." J.A. 82, quoting *United States* v. *Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972); see also *United States* v. *Wooten*, 688 F.2d 941, 950 (4th Cir. 1982); *Russell* v. *LEAA*, 637 F.2d 354, 356 (5th Cir. 1981). If Congress had intended to restrict subsection (a)(1) to interests in an enterprise, as petitioner argues, it presumably would have done so expressly, as it did in subsection (a)(2). See *United States* v. *Turkette*, *supra*; *North Haven Board of Education* v. *Bell*, No. 80-986 (May 17, 1982), slip op. 8; *United States* v. *Naftalin*, 441 U.S. 768, 773-774 (1979).[*] Petitioner has not iden-

[*] In *Naftalin*, which concerned the construction of Section 17(a)(1) of the Securities Act of 1933, 15 U.S.C. 77q(a)(1), the respondent argued that employment of a device, scheme, or artifice to defraud in the offer or sale of securities was not unlawful unless the fraud operated "upon the purchaser" of the securities. This Court rejected that argument, stating (441 U.S. at 773-774): "The short answer is that Congress did not write the statute that way." By the same token, the short

tified any conceivable reason why Congress would have used different language in two subsections of the same provision if the same meaning was intended. The only possible explanation for such draftsmanship would be simple mistake—something that should not be lightly presumed.

The evolution of these provisions provides further evidence that Congress intended Section 1963(a)(1) to extend beyond interests in an enterprise. An early version of RICO, S. 1861, 91st Cong., 1st Sess. (1969), contained a single forfeiture provision that was limited to any "interests in the enterprise." Later, however, this provision was divided into two subsections, and the phrase "in the enterprise" was excluded from the first. Where Congress includes limiting language in an early version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended. See, *e.g.*, *Arizona* v. *California*, 373 U.S. 546, 580 (1963). Here, as the court of appeals concluded (J.A. 93), Congress's intent is clearly indicated by the fact that it "considered limiting all forfeitures under RICO to enterprise interests but, after extensive legislative work, ultimately opted to delete this across-the-board restriction." See also Weiner, *Crime Must Not Pay: RICO Criminal Forfeiture in Perspective*, 1981 N. Ill. U.L. Rev. 225, 238 & n.49.

Petitioner argues (Br. 17-18) that if the term " 'interest' were as all encompassing as suggested by the *en banc* decision below, 18 U.S.C. § 1963(a)(2) would have no meaning independent of 18 U.S.C. § 1963(a)(1)." This argument is plainly incorrect.

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answer to petitioner's contention that 18 U.S.C. 1963(a)(1) is limited to interests in an enterprise is that Congress did not so provide.

Section 1963(a)(1) reaches "any interest," whether or not in an enterprise, provided that the interest was "acquired or maintained in violation of section 1962." Section 1963(a)(2), on the other hand, is restricted to interests in an enterprise, but the interest itself need not have been illegally acquired or maintained. Instead, the enterprise must be one that the defendant "established operated, controlled, conducted, or participated in the conduct of, in violation of section 1962." Thus, for example, racketeering profits and proceeds are subject to forfeiture under subsection (a)(1) but not under subsection (a)(2). And if a defendant lawfully acquired an interest in an enterprise and then conducted or participated in the conduct of the enterprise's affairs through a pattern of racketeering activity, his interest in the enterprise would be subject to forfeiture under subsection (a)(2) but not under (a)(1). There are undoubtedly factual situations to which both subsections of the forfeiture provision apply, but, as interpreted by the court below, they are clearly not redundant.[7]

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[7] Petitioner discusses several hypothetical cases (Br. 16-17, 23-28) in an effort to demonstrate that Section 1963(a)(1) extends only to interests in an enterprise. This discussion, however, is confused and demonstrates merely that petitioner does not understand the operation of the RICO statute.

In the first hypothetical (Pet. Br. 16-17) two persons have established and operate a "legitimate" enterprise, which is variously described as a "corporation" and a "partner[ship]." One of the principals conducts or participates in the affairs of the enterprise through a pattern of racketeering activity and thereby obtains $200,000 in illegal profits, twice as much as the business earns by legal means. The guilty principal then reinvests $150,000 of illegal profits in the business. Petitioner asserts that if the guilty principal were convicted of racketeering, "the corporation would be required to forfeit the

2. Our interpretation of 18 U.S.C. 1963(a)(1) is also supported by the RICO statute's definition of the

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$200,000 received" (*ibid.*). This, he claims (*id.* at 17), might "affect the stability of the company" and thereby frustrate Congress's intent to permit the survival of "legitimate businesses." Not only is this hypothetical implausible, but petitioner's argument is nonsense. A corporation would not be liable for a personal judgment of forfeiture against an individual. On the other hand, there is nothing startling about the proposition that a partnership is liable for a partner's business debts, and we see no reason why Congress would have wanted the partnership to keep the illegal profits or why Congress would have been concerned about preserving a business so dependent upon the fruits of illegal activity.

In the second hypothetical (Pet. Br. 23-25), an officer, an employee, and a stockholder of a legitimate pharmaceutical company sell the corporation's product illegally and "funnel[] part of their profit through" the corporate books (*id.* at 24). According to petitioner, these funds amount to "substantial income" for the company (*ibid.*). How or if the racketeers regain these funds petitioner does not explain. Petitioner attempts to identify the particular provisions of the RICO statute violated by each participant. We do not necessarily agree with this analysis, but in any event it appears irrelevant for present purposes. Petitioner asserts (Br. 25) that "forfeiture of proceeds would not be required, since such would not serve the purpose of RICO." Here, as in the prior hypothetical, petitioner's point appears to be that the legitimate business should not have to disgorge any reinvested racketeering proceeds. As we noted above, however, a non-defendant corporation would not be liable on judgments against individuals. On the other hand, we see no reason why the defendants' stock in the company or any claims they might have against the company should not be forfeitable.

In the third and fourth hypotheticals (Pet. Br. 25-28), illegitimate enterprises earn profits, some of which are used for purchases or investments on behalf of the enterprise and some of which are distributed to its members. Petitioner claims that the property of the enterprises would be forfeitable, while the distributed profits would not. Petitioner does

term "enterprise" (18 U.S.C. 1961(4)), which encompasses both legal entities and illegitimate associations-in-fact. *United States* v. *Turkette*, 452 U.S. 576 (1981). In the case of illegitimate associations-in-fact, forfeiture of interests in the enterprise is usually of little use, because such associations rarely have identifiable assets. Instead, any proceeds or profits received are usually distributed immediately to those associated with the enterprise. As a result, construing Section 1963(a)(1) to reach only interests in an enterprise would blunt the effectiveness of that provision in combatting illegitimate enterprises. Petitioner has not identified any reason why Congress might have wanted effectively to exempt such enterprises from RICO's forfeiture provision. Acceptance of his argument would mean that "[w]hole areas of organized criminal activity would be placed beyond the * * * reach of" that important provision (*Turkette, supra*, 452 U.S. at 589). "In view of the purposes and goals of the Act, as well as the language of the statute," it seems unlikely "that Congress nevertheless confined the reach of [the forfeiture provision] to only narrow aspects of organized crime, and, in particular * * * *only* the infiltration of legitimate business" (*id.* at 590).[8]

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not explain why Congress would have wanted to insulate distributed profits from forfeiture. In any event, it is rare for a wholly illegal enterprise to make investments or purchases in its own name.

[8] Apparently recognizing the unlikelihood that Congress intended effectively to exempt illegitimate enterprises from RICO's forfeiture provisions, petitioner suggests (Br. 21-22, 25-28) that there are identifiable interests in illegitimate enterprises that may be forfeited. These interests, he claims, are "undistributed profits" (*id.* at 26) and "assets * * * purchased

3. In *Marubeni*, the court's decision that racketeering income is not subject to forfeiture under Section 1963(a)(1) was based in large measure upon 18 U.S.C. 1962(a), which makes it a separate crime "to use or invest" racketeering income or proceeds "in acquisition of any interest in, or the establishment or operation of" any interstate enterprise. Section 1962(a) contains an exception, however, for certain purchases of securities on the open market where the purchaser does not intend to control the issuing company and the securities in that company owned by the

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or contributed by the individual members in furtherance of the enterprise" (*id.* at 28). Illegitimate enterprises, however, are unlikely to have much in the way of undistributed profits; and identification of assets contributed to the illegitimate association will usually be quite difficult. In any event, that limited forfeiture would not be sufficient to serve RICO's broad remedial goals.

Taking another tack, petitioner (Br. 20-21) and the dissenters below (J.A. 108) argue that the Department of Justice itself has recognized that " 'there is often nothing to forfeit • • • in the case of individuals associated in fact" (J.A. 108, quoting Taylor, *Forfeiture under 18 U.S.C. § 1963—RICO's Most Powerful Weapon*, 117 Am. Crim. L. Rev. 379, 391 (1980)), quoting Criminal Division, U.S. Dep't of Justice, *Racketeer Influenced and Corrupt Organizations Statute* 55 (4th ed. 1980)). The publication from which this quotation was taken is a handbook prepared some time after the RICO statute was enacted by the staff of one of the Organized Crime and Racketeering strike forces for use by Department of Justice attorneys. It therefore hardly constitutes a definitive interpretation of the statute's meaning. Furthermore, the statement does not necessarily mean that racketeering proceeds are not subject to forfeiture. Even if forfeiture of racketeering proceeds is permitted, it will nevertheless be true that there will often be nothing to forfeit in the case of illegitimate enterprises because in many instances no proceeds can be located. Alternatively, the statement may have been meant simply as a synopsis of the then-prevailing case law.

purchaser, his family, and his racketeering accomplices total less than 1% of the company's shares and do not confer the power to elect any member of the board of directors. Based upon this provision, the *Marubeni* court reasoned (611 F.2d at 767): "Congress would not have established rules for the investment of racketeering income, enforced by the penalty of criminal forfeiture, if it intended the government to seize that income regardless of how it was used."

Both petitioner and the dissenters below have eschewed this argument, and in our view it is plainly flawed. Simply because under certain circumstances the investment of racketeering income is not a separate crime, it does not follow that Congress intended to exempt all such income from forfeiture. By the *Marubeni* court's reasoning, no illegally obtained interest should be subject to forfeiture unless the subsequent investment of that interest constitutes a separate crime. Obviously there is no such rule. For example, under 21 U.S.C. 881(a)(6), reinvested profits derived from an illegal drug transaction are expressly made subject to forfeiture, yet no provision of law makes it a separate crime to invest those funds.[9]

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[9] Without explanation, the dissent below suggested (J.A. 103) that Section 1963(a)(1) is the applicable forfeiture provision when Section 1962(a) or (b) is violated and that Section 1963(a)(2) is the applicable forfeiture provision when Section 1962(c) is violated. And since Section 1962(a) and (b) concern illegal conduct relating to interests in an enterprise, the dissent concluded that Section 1963(a)(1) authorizes the forfeiture of only such interests. Petitioner has chosen not to advance this argument, and it is obviously untenable.

First, Congress expressly provided that both Section 1963(a)(1) and (2) apply to violations of "section 1962."

4. Petitioner places heavy emphasis (Br. 6-7) on 21 U.S.C. 848(a)(2), which was enacted as part of the Controlled Substances Act, 21 U.S.C. (& Supp. V) 801 *et seq.*, and, as noted, authorizes the forfeiture of "profits" obtained in a continuing criminal enterprise engaged in certain drug offenses (see 21 U.S.C. 848(b)). In like manner, the Ninth Circuit relied upon 21 U.S.C. 848(a)(2) in concluding that "[h]ad Congress intended forfeiture of racketeering income, * * * it would have expressly so provided" (*Marubeni, supra*, 611 F.2d at 766 n.7). As the court below concluded (J.A. 97-98), however, inclu-

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Had Congress intended to limit Section 1963(a)(1) and (2) to particular subsections of Section 1962, it would presumably have done so expressly. Second, other language contained in the forfeiture provision clearly indicates that no such limitation was intended. To be sure, Section 1963(a)(1) applies to interests that have been illegally "acquired or maintained," while Section 1962(b) makes it illegal to "acquire or maintain" an interest in an enterprise by certain means and Section 1962(a) outlaws certain "acquisition[s]" of such interests. Similarly, Section 1963(a)(2) applies to interests that the defendant has illegally "conducted * * * or participated in the conduct of," while Section 1962(c) makes it illegal "to conduct or participate * * * in the conduct of [an] enterprise's activity or collection of unlawful debt." However, the dissenters' neat theory soon breaks down. Section 1963(a)(2) also speaks of interests in enterprises that the defendant has illegally "established operated, or controlled," and that language plainly applies to violations of Section 1962(a) and (b). Section 1962(a) makes it a crime to use racketeering income in "the establishment or operation of" an interstate enterprise, and Section 1962(b) makes it illegal to acquire or maintain "control of" such an enterprise by certain illegal means. Thus, since Section 1963(a)(2) unmistakeably applies to violations of all subsections of 1962, there is no basis for concluding that Section 1963(a)(1) is restricted to violations of Section 1962(a) and (b).

sion in the Controlled Substances Act of a forfeiture provision specifically mentioning "profits" cannot be regarded as substantial evidence that the broader language of 18 U.S.C. 1963(a)(1) was not meant to reach profits, as well as other types of property interests. Because of the enormous volume of legislation considered by Congress and the diverse sources responsible for drafting bills, language in one statute often sheds little light upon the meaning of language in a separate statute, even when they were enacted contemporaneously. Nevertheless, if Congress had employed the same term in both forfeiture provisions, there would be some basis for arguing that a single, consistent meaning was intended. Here, however, petitioner suggests that because a more specific term—"profits"—was used in 21 U.S.C. 848(a)(2)(A), the more general term "interest" employed in 18 U.S.C. 1963(a)(1) must not have been intended to reach profits. We would doubt the soundness of this reasoning even if the two provisions derived from the same piece of legislation. Unless Congress has some reason to believe that a broad general term does not encompass a narrow, more specific term, the use of specific language in one provision cannot fairly be read as imposing limitations upon broader, more general language in another provision.

Furthermore, in the present case, it is readily apparent why Congress utilized different language in the two provisions. The RICO statute was broadly aimed at organized crime's economic power in all its forms, including cash assets and profits, ownership interests in legitimate and illegitimate enterprises, all types of contraband, stolen property, illegally obtained contract rights, and offices and positions of influence. Thus, the broad term "interest" was used in

18 U.S.C. 1963(a)(1) in order to encompass all these forms of real and personal property and other sources of illegal wealth and control. By contrast, the narcotics activity proscribed by 21 U.S.C. 848 almost invariably generates monetary profits, and therefore the narrower term "profits" was employed in 21 U.S.C. 848(a)(2).

Petitioner certainly is correct in suggesting that members of Congress who voted for the RICO statute were aware of the Controlled Substances Act. At least one congressman noted that the narcotics forfeiture provision bore a "close relationship" to the pending RICO statute (116 Cong. Rec. 33651 (1970) (remarks of Rep. Brotzman)), and others viewed the two Acts as essential, linked components of an attack on organized crime's far-flung criminal activities, including those in the realm of drugs (see, *e.g.*, 116 Cong. Rec. 1180-1182 (1970) (remarks of Sen. Thurmond); *id.* at 33631 (remarks of Rep. Weicker); *id.* at 33646 (remarks of Rep. Kastenmeier); *id.* at 35318 (remarks of Rep. Anderson)). Therefore, if members of Congress compared the two provisions closely, as petitioner's argument supposes, it seems quite unlikely that without explanation a potent forfeiture weapon was withheld from the RICO statute, which was intended for use in a broad assault on organized crime, while that same weapon was included in the Controlled Substances Act, which was meant for use in one part of the same struggle. Like illegal drug transactions, many of the predicate acts of racketeering, such as gambling, arson, and extortion (see 18 U.S.C. (Supp. V) 1961(1)), almost invariably generate large cash proceeds. Indeed, the same drug offenses may provide the basis for conviction under RICO (see 18 U.S.C. (Supp. V) 1961(1))

("'racketeering activity' means * * * dealing in narcotic or other dangerous drugs") and 21 U.S.C. 848. Thus, if Congress had considered the question and felt that forfeiture of profits was appropriate in one case but not the other, one would expect it to have so indicated, but no such distinction was drawn. Accordingly, "Congress'['s] use of 'profits' in 21 U.S.C. § 848(a)(2)(A) cannot support the negative inference * * * as to the meaning of 'interest' in 18 U.S.C. § 1963(a)(1)" (J.A. 98).

5. Petitioner also suggests (Br. 29-33) that subsequent proposed legislation demonstrates that the 1970 RICO forfeiture statute excludes profits. This conclusion is wholly unjustified. The bills in question were introduced to rectify *Marubeni* and similar district court cases. Their introduction hardly suggests that their sponsors viewed those decisions as correct interpretations of 18 U.S.C. 1963(a)(1) as it currently stands.[10] See *United States* v. *Gordon*, 638

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[10] For example, in urging passage of the bill introduced as S. 2320, 97th Cong., 2d Sess. (1982), the Justice Department wrote prior to the court of appeals' en banc decision in this case (Letter from Robert A. McConnell, Assistant Attorney General for Office of Legislative Affairs, U.S. Dep't of Justice to the Speaker, House of Representatives (Mar. 9, 1982) (attachment entitled: "Section by Section Analysis: Proposed 'Comprehensive Criminal Forfeiture Act of 1984,'" at 6-7)):

> It has been the government's position that an "interest * * * acquired or maintained in violation of section 1962" as described in 18 U.S.C. 1963(a)(1) includes the profits or proceeds of the racketeering activities proscribed by the RICO statute. However, the courts that have directly addressed this issue to date have not agreed with this position, but have instead interpreted the term "interest" to mean a continuing, proprietary interest *in an enterprise*. * * * The result of such decisions is that the profits generated by racketeering activity generally are not subject to forfeiture under RICO unless reinvested in the

F.2d 886, 888 n.5 (5th Cir. 1981). And, in any event, it is settled that " 'the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.' " *Jefferson County Pharmaceutical Association* v. *Abbott Laboratories*, No. 81-827 (Feb. 23, 1983), slip op. 15 n.27, quoting *United States* v. *Price*, 361 U.S. 304, 313 (1960). See also *United States* v. *Clark*, 445 U.S. 23, 33 n.9 (1980); *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 170 (1968); *Haynes* v. *United States*, 390 U.S. 85, 87 n.4 (1968).

For the same reasons, petitioner's argument draws no support from the fact that certain state racketeer-

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enterprise or used to acquire or control another enterprise.

The inability to reach directly the profits generated by racketeering has severely restricted the effectiveness of the RICO forfeiture provisions. Illegitimate enterprises encompassed by the RICO statute rarely have any significant forfeitable assets other than the profits generated by illegal activities. In addition, when legitimate businesses come under the control of racketeers, their assets are commonly bled until the company goes bankrupt, leaving little in the way of a forfeitable interest in the company within the prevailing restrictive court interpretations of 18 U.S.C. 1963(a)(1).

The purported purpose of the RICO forfeiture provisions is to separate racketeers from their sources of economic power. But without the authority to reach the ill-gotten profits of racketeering, this goal cannot be realized. * * *

The government's inability to reach the gain produced through racketeering, such as the insurance proceeds in the [present] case, has seriously limited the intended utility of the RICO forfeiture sanction. To cure this problem section 1963(a), as amended by section 101 of the bill, specifically provides in the description of property subject to criminal forfeiture, which is set out in paragraph (2), for the forfeiture of racketeering proceeds.

ing laws provide expressly for the forfeiture of "profits," "money," or "all property, real or personal," acquired from racketeering (see Pet. Br. 8-9). With one exception, all of the state provisions upon which petitioner relies postdate federal court decisions barring the forfeiture of racketeering profits under the federal law. See *United States* v. *Meyers*, 432 F. Supp. 456 (W.D. Pa. 1977); *United States* v. *Thevis*, 474 F. Supp. 134 (N.D. Ga. 1979).[11] Undoubtedly aware of the problems created by such decisions, the legislatures of these states presumably employed language different from that in 18 U.S.C. 1963(a)(1) in order to avoid similar interpretations of their new racketeering laws. While these state statutes are not evidence of Congress's intent in enacting Section 1963(a)(1), they do illustrate that a legislative body interested in attacking organized crime's economic base will provide for the forfeiture of racketeering profits.[12]

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[11] See Colo. Rev. Stat. § 18-17-106 (1981) (enacted 1981); 1982 Conn. Pub. Acts No. 82-343 (enacted 1982); Fla. Stat. Ann. § 895.05(2)(a) (West Cum. Supp. 1983) (relevant language added by 1981 Fla. Laws ch. 81-141, § 2); Ga. Code Ann. § 26-3405 (Cum. Supp. 1981) (enacted 1980); Ind. Code Ann. § 34-04-30.5.3 (Burns Cum. Supp. 1982) (enacted 1980); R.I. Gen. Laws § 7-15-3 (Cum. Supp. 1980) (enacted 1979). The sole exception, Hawaii Rev. Stat. § 842-3 (1976), which was enacted in 1972, requires the forfeiture of "any interest or property [the defendant] has acquired or maintained in violation of [the racketeering law]" and provides for the seizure of "*all property or other interest* declared forfeited" (emphasis added). This language illustrates that the legislature regarded "property" as falling within the meaning of the broad term "interest."

[12] Petitioner suggests (Br. 28-29) that criminal forfeiture of racketeering profits and proceeds is unnecessary because the victims of racketeering may recover such sums through civil actions (18 U.S.C. 1964(c)). However, if Congress had

C. The Legislative History of the RICO Statute Shows that Congress Intended to Require the Forfeiture of Racketeering Profits and Proceeds

The legislative history of the RICO statute provides confirmation for the conclusion that 18 U.S.C. 1963(a)(1) authorizes the forfeiture of racketeering profits and proceeds (see J.A. 87-95). Petitioner's claim (Br. 11-21) that the legislative history demonstrates a more limited congressional intent is wholly without merit.

1. The legislative history makes clear that the RICO statute was intended to provide new weapons of unprecedented character for an assault upon organized crime and its economic roots. In the Statement of Findings prefatory to the Organized Crime Control Act of 1970, Congress described the problem of organized crime in dramatic terms (84 Stat. 922-923, 18 U.S.C. 1961 note):

> (1) organized crime in the United States is a highly sophisticated, diversified, and widespread

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felt that civil suits alone were sufficient to strike at organized crime's economic base, it would not have enacted the criminal forfeiture provision. Civil suits by themselves are not enough because, among other things, racketeering profits and proceeds often cannot be traced to particular victims. Thus, if racketeering profits and proceeds are not subject to criminal forfeiture, organized crime's enormous income from crimes such as gambling and illegal drug activities (see 18 U.S.C. (Supp. V) 1961(1)) may go untouched.

Moreover, criminal forfeiture under 18 U.S.C. 1963 should not interfere with recovery by victims of racketeering, because in disposing of forfeited interests the Attorney General is directed to "mak[e] due provision for the rights of innocent persons." Customs procedures incorporated by reference in 18 U.S.C. 1963(c) permit such persons to file claims for and to receive forfeited property (see 19 U.S.C. (Supp. V) 1608, 1613).

> activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

Congress declared that "[i]t is the purpose of this Act to seek the eradication of organized crime * * * *by providing enhanced sanctions and new remedies* to deal with the unlawful activities of those engaged in organized crime." 84 Stat. 923 (emphasis added). See *Turkette, supra*, 452 U.S. at 588-589. Having set forth the basis for and purpose of this extraordinary legislation, Congress directed in the preamble of Title

IX that the statute "be liberally construed to effectuate its remedial purpose" (Section 904(a), 84 Stat. 947, 18 U.S.C. 1961 note),[13] which, as noted, was the eradication of organized crime.[14]

Congress stressed the need to fashion new remedies in order to achieve its far-reaching objectives (S. Rep. No. 91-617, 91st Cong., 1st Sess. 76 (1969) (hereinafter "Senate Report")). As the Senate Report stated: "What is needed here * * * are new approaches that will deal not only with individuals, but also with the economic base through which those individuals constitute such a serious threat to the economic well-being of the Nation. In short, an attack must be made on their source of economic power itself, and the attack must take place on all available fronts" (*id.* at 79). Incorporating the conclusions of the Antitrust Section of the American Bar Association, Congress further stated its intent that " 'all legitimate methods of combating organized crime must be utilized' " (*id.* at 76; citation omitted). Senator

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[13] RICO is the only substantive federal criminal statute that contains such a directive. A similar provision appears in the Criminal Appeals Act, 18 U.S.C. 3731.

[14] Several courts of appeals have acknowledged and followed Congress's directive to construe the RICO statute liberally. See *United States* v. *Godoy*, 678 F.2d 84, 86-87 (9th Cir. 1982), petition for cert. pending, No. 82-538; *United States* v. *Grzywacz*, 603 F.2d 682, 686 (7th Cir. 1979), cert. denied, 446 U.S. 935 (1980); *United States* v. *Huber*, 603 F.2d 387, 394 (2d Cir. 1979), cert. denied, 445 U.S. 927 (1980); *United States* v. *Swiderski*, 593 F.2d 1246, 1248 (D.C. Cir. 1978), cert. denied, 441 U.S. 933 (1979); *United States* v. *Forsythe*, 560 F.2d 1127, 1135-1136 (3d Cir. 1977); *United States* v. *Hawes*, 529 F.2d 472 (5th Cir. 1976); *United States* v. *Campanale*, 518 F.2d 352 (9th Cir. 1975), cert. denied, 423 U.S. 1050 (1976).

Scott remarked that "new legal weapons are needed in the crime fighters' arsenal" (116 Cong. Rec. 819 (1970)), and Senator McClellan stressed the urgent need for new penal remedies to divest "ill-gotten gains" amassed by "criminals where they enter or operate an organization through a pattern of racketeering activity" (*id.* at 591-592). Representative Poff, the floor manager of the bill in the House, made similar observations (*id.* at 35193),[15] and Representative Rodino exhorted that "[d]rastic methods * * * are essential, and [Congress] must develop law enforcement measures at least as efficient as those of organized crime" (*id.* at 35199).[16]

The RICO statute was viewed as one such "extraordinary" weapon to "strik[e] a mortal blow against the property interests of organized crime" "by attacking its property interests and by removing its members from control of legitimate businesses which have been acquired or operated by unlawful racketeering methods" (116 Cong. Rec. 602 (1970) (remarks of Sen. Hruska)). The criminal forfeiture provision was included to serve all of the aims of the RICO statute: to "punish, deter, incapacitate, and * * * directly to remove [organized crime's] corrupting influence from the channels of commerce" (*id.* at 18955 (remarks of Sen. McClellan)).

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[15] Because of their roles in achieving passage of the RICO statute, the remarks of Senators McClellan and Hruska, the sponsors of the Senate bill, and Representative Poff, the House floor manager, are entitled to additional weight. *Lewis* v. *United States*, *supra*, 445 U.S. at 63.

[16] Senator Hruska also spoke of the need for prosecutors to "use every legal means at their command to combat this evil menace" (115 Cong. Rec. 5886 (1969)), the aim of which was the "amassing of huge profits" (116 Cong. Rec. 601 (1970)).

2. The legislative history also leaves no doubt that, in Congress's view, the economic power of organized crime derived from its huge illegal profits.[17] In light of this fact, Congress could not have hoped to mount a successful attack upon organized crime's economic roots without reaching racketeering profits.

In his Message on Organized Crime, President Nixon noted that organized crime's "economic base is principally derived from its virtual monopoly of illegal gambling, the numbers racket, * * * the importation of narcotics," and certain other crimes (Senate Report, *supra*, at 35). Similarly, the Senate Report incorporated the American Bar Association's conclusion that " 'organized crime * * * takes billions of dollars—mostly in cash and mostly untaxed—annually from the American public * * *. The magnitude of the problem makes it clear that all legitimate methods of combating organized crime must be utilized' " (*id.* at 76; citation omitted).

During the congressional debates, the sources and magnitude of organized crime's income were repeatedly emphasized. Organized crime's income from gambling, identified as its major revenue source, was estimated at between $20 billion and $50 billion per year, and of that sum more than $7 billion was estimated to be profit. In its next most profitable activity, the illegal distribution of narcotics, organized crime was estimated to reap annual profits of $350

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[17] See Blakey, *The RICO Civil Fraud Action In Context: Reflections on* Bennett *v.* Berg, 58 Notre Dame L. Rev. 237, 249-256 (1982), for a history of congressional investigations and hearings into organized crime and Congress's long-standing concerns about racketeers' wealth and influence. See also Task Force on Organized Crime, The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Organized Crime* (1967).

million. About the same sum was estimated to flow annually into organized crime's coffers from loan sharking.[18] Lesser profits were thought to derive from prostitution, extortion, protection and shakedown activities, illegal forgeries, credit card frauds, and miscellaneous crimes.[19] In short, organized crime was said to " 'operate[] vast illegal enterprises that produce an annual income of many billions of dollars.' " 116 Cong. Rec. 586, 18913 (1970) (remarks of Sen. McClellan) (citation omitted); *id.* at 819 (remarks of Sen. Scott); *id.* at 35305 (remarks of Rep. Hogan); *id.* at 35309 (remarks of Rep. Minshall); *id.* at 35310 (remarks of Rep. Flowers); *id.* at 35320 (remarks of Rep. Stratton). As several congressmen noted, organized crime's annual illicit income of approximately $60 billion was as large as the combined income of AT&T, Standard Oil of New Jersey, General Motors, General Electric, Ford, IBM, RCA, and Chrysler. *Id.* at 35312 (remarks of Rep. Brock); *id.* at 35320 (remarks of Rep. Price).[20]

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[18] See 115 Cong. Rec. 5873, 5884-5885 (1969); 116 Cong. Rec. 590, 592 (1970) (remarks of Sen. McClellan); *id.* at 601 (remarks of Sen. Hruska); *id.* at 603-604 (remarks of Sen. Allott); *id.* at 606, 607 (remarks of Sen. Byrd); *id.* at 831 (remarks of Sen. Harris); *id.* at 962 (remarks of Sen. Murphy); *id.* at 970 (remarks of Sen. Bible); *id.* at 35199 (remarks of Rep. St. Germain); *id.* at 35201 (remarks of Rep. Poff); *id.* at 35216 (remarks of Rep. McDade); *id.* at 35305 of Rep. Hogan); *id.* at 35319 (remarks of Rep. Anderson).

[19] See, *e.g.*, 116 Cong. Rec. 591 (1970) (remarks of Sen. McClellan); *id.* at 601 (remarks of Sen. Hruska); *id.* at 606 (remarks of Sen. Byrd); *id.* at 970 (remarks of Sen. Bible).

[20] An August 1969 *Time Magazine* cover story, introduced into the record by Senator McClellan, estimated the annual receipts of La Cosa Nostra at " 'well over $30 billion,' " of which at least $7 billion to $10 billion were thought to constitute profit (116 Cong. Rec. 595 (1970); citation omitted).

In view of Congress's deep concern about organized crime's enormous illegal income and Congress's expressed desire to forge new means to combat organized crime's power, the intent to authorize forfeiture of racketeering profits seems obvious. The House Report, *supra*, at 57, stated that the forfeiture provision extended "to all property and interests, as broadly defined, which are related to the violations." Representative Poff stated: "After conviction, the ill-gotten gains must be forfeited to the Government. This sanction is not only poetic justice but a strong deterrent as well" (115 Cong. Rec. 9951 (1969)). President Nixon, endorsing the concept of "new weapons and tools * * * to enable the Federal government to strike * * * at the * * * *sources of revenue* that feed the coffers of organized crime," stated that forfeiture was among the arsenal of new weapons designed to "*attack the property of organized crime*" (*Measures Relating to Organized Crime: Hearings Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary*, 91st Cong., 1st Sess. 448-449 (1969) (emphasis added) (hereinafter "*Senate Hearings*") Attorney General Mitchell explained that "the arrest and conviction of Cosa Nostra leaders will not in and of itself destory organized crime unless *the sources of revenue* are demolished. * * * [A]s long as *the flow of money* continues * * * and *the principal sources* [*organized crime's*] *revenue*" remain untouched, organized crime will not be eradicated (*id.* at 112; emphasis added). The United States Chamber of Commerce urged Congress to pass legislation broadly and comprehensively aimed at eliminating " 'organized crime's economic power base' " (116 Cong. Rec. 600 (1970); citation omitted). In Senator McClellan's view, RICO's penalties, including forfeiture, were intended not only "to punish, deter, [and] incapacitate," but also to remove organ-

ized crime "from the channels of commerce" (116 Cong. Rec. 18955 (1970)).[21]

3. It is true that Congress viewed the RICO statute in large measure as a response to organized crime's infiltration of legitimate enterprises. *Turkette*, *supra*, 452 U.S. at 591. Accordingly, Congress anticipated that one of RICO's chief results would be the forfeiture of ownership or controlling interests in infiltrated businesses. See, *e.g.*, 116 Cong. Rec. 603 (1970) ("[T]he bill is designed to root out the influence of organized crime in legitimate business, into which billions of dollars of illegally obtained money is channelled * * *. [A] unique forfeiture provision will make it possible to divest the racketeer of any interest he may have obtained in the organization or business." (remarks of Sen. Yarborough, quoted at Pet. Br. 13-14)). But Congress's concerns were not limited to the problem of organized crime's infiltration of legitimate businesses. As previously noted, Congress's broader goal was to remove the profit from organized crime by separating the racketeer from his ill-gotten gains.

Moreover, Congress recognized that organized crime's objective in infiltrating legitimate businesses often was not to obtain a valuable, long-term interest in the enterprise but to secure a quick profit by "bleeding" the company's assets and leaving it bank-

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[21] Petitioner's claim (Br. 15-16) that the *sole* purpose of forfeiture was removal of organized crime from the legitimate enterprises that it infiltrated and corrupted is thus incorrect. Although that was an important objective of the RICO statute, it was not the only one. Indeed, when Senator McClellan introduced S. 1861, a predecessor bill, he explained that it was intended to "remove the illegal profit potential" as well as to "effectively remove the organized crime element from a particular field of activity" (115 Cong. Rec. 9567 (1969)).

rupt.[22] Frequently this was accomplished by the very activity involved in this case—burning down a business and collecting fire insurance proceeds. Senate Report, *supra*, at 77; 115 Cong. Rec. 5874 (1969) (remarks of Sen. McClellan). Obviously, forfeiture of interests in an enterprise would do little to deter such activity. Indeed, authorizing forfeiture of interests in an enterprise but not racketeering profits and proceeds would only encourage the speedy looting of infiltrated companies.

Congress's urgent concern about preventing these practices is unmistakable. On several occasions, Senator McClellan noted that "approximately 200 syndicate-inspired bankruptcy schemes are perpetrated annually, each involving up to 250 or more creditors and upwards of $200,000 in merchandise or material." See, *e.g.*, 116 Cong. Rec. 18940 (1970). See also 115 Cong. Rec. 5874 (1969); 116 Cong. Rec. 592 (1970). He stated (*id.* at 591): "In business, the mob bleeds a firm of assets, then takes bankruptcy. It steals securities and then uses the stolen securities to fraudulently obtain funds from lending institutions." The Senate Report also described the effect of organized crime takeovers of legitimate businesses: "After takeover, defaulted loans [to organized crime loansharks] are often liquidated by professional arsonists burning the business and then collecting the insurance or by various bankruptcy fraud tech-

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[22] Senator Hruska entered into the record an account of the Murray Packing Company, a Bronx meat processing plant that was forced into bankruptcy after an organized crime figure became president. This individual bought large quantities of supplies on credit, ran up debts of approximately $1.3 million, made quick sales at cut-rate prices, and appropriated about $750,000 of company funds for his personal use (115 Cong. Rec. 23569 (1969)).

niques * * *" (Senate Report, *supra*, at 77). This analysis was repeated by a witness testifying in favor of the legislation on behalf of the Chamber of Commerce (*Senate Hearings*, *supra*, at 417 (remarks of Donald F. Taylor). As one expert summarized the problem: "[O]rganized crime and organized criminals will go into any business area where they can make a fast buck" (*id.* at 180 (statement of Paul J. Curran, Chairman, New York State Commission of Investigation)).

Congress took note of other means by which organized crime extracted immediate profits at the expense of infiltrated enterprises. The Senate Report quoted FBI Director Hoover's testimony about pending cases involving thefts of securities from brokerage houses by known organized crime figures (Senate Report, *supra*, at 77). Attorney General Mitchell cited examples of organized crime's theft of Treasury bonds, securities, stock warrants, and money from established financial institutions (116 Cong. Rec. 5768 (1970)). Organized crime was repeatedly linked to credit-card frauds, cargo theft, hijacking, and fencing operations (*id.* at 970 (remarks of Sen. Bible)) and to the infiltration of labor unions and the manipulation of and theft from welfare and pension funds (115 Cong. Rec. 5874 (1969) (remarks of Sen. McClellan)). See also Senate Report, *supra*, at 78. As several congressmen observed, infiltrated enterprises were sometimes destroyed by racketeers for tax reasons. See, *e.g.*, 115 Cong. Rec. 23569 (1969) (remarks of Sen. Hruska); 116 Cong. Rec. 953 (1970) (remarks of Sen. Thurmond) ("[O]ne of the favorite devices of organized crime is to infiltrate a company, build it up, and then let it go broke so that it can take

advantage of certain tax provisions and other devices thus disposing of or protecting a large treasury of illegally obtained dollars.").

Because of the danger that an infiltrated business would be quickly stripped of its assets, the forfeiture provision was designed "to remove the illegal profit potential" as well as to "effectively remove the organized crime element from a particular field of activity" (115 Cong. Rec. 9567 (1969) (remarks of Sen. McClellan, introducing a predecessor bill, S. 1861)). In light of Congress's expressed concern about the bleeding of legitimate businesses, we think it quite unlikely that Congress intended to enact a forfeiture provision that provided an incentive for such activity while authorizing forfeiture of worthless interests in a bankrupt shell. Cf. *Turkette, supra*, 452 U.S. at 589 ("Considering * * * the Act's broad purposes, the construction of RICO suggested by [petitioner] * * * is unacceptable. Whole areas of criminal activity would be placed beyond the substantive reach of the enactment.").

Petitioner's interpretation of 18 U.S.C. 1963(a)(1) is equally inconsistent with another pressing concern expressed by Congress, *i.e.*, organized crime's use of its profits to escape punishment. In its Statement of Findings, Congress spoke of organized crime's use of money "obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation * * * to subvert and corrupt our democratic processes * * *" (84 Stat. 922-923, 18 U.S.C. 1961 note). By corruption of the democratic processes, Congress meant widespread payoffs to police, prosecutors, judges, juries, and legislators, which

were thought to total approximately $2 billion each year. See, *e.g.*, 116 Cong. Rec. 591, 596 (1970) (remarks of Sen. McClellan); *id.* at 601 (remarks of Sen. Hruska); *id.* at 607 (remarks of Sen. Byrd); *id.* at 953 (remarks of Sen. Thurmond); *id.* at 962 (remarks of Sen. Murphy); *id.* at 35200 (remarks of Rep. St. Germain); *id.* at 35307 (remarks of Rep. Scheuer); *id.* at 35309 (remarks of Rep. Mizell); *id.* at 35311 (remarks of Reps. Fountain and Broomfield); *id.* 35328 (remarks of Rep. Meskill). See also *id.* at 595, 596 (excerpts from *Time* Magazine's cover story on organized crime, see page 39 note 20, *supra*). Exempting racketeering profits from forfeiture would permit this corruption to continue and thereby appreciably hinder the enforcement of every provision of the RICO statute.

4. As evidence that Congress did not intend to reach racketeering profits, petitioner points (Br. 14-15) to a 1969 letter from then Deputy Attorney General Kleindienst to Senator McClellan. In that letter, Mr. Kleindienst, speaking for the Department of Justice, stated concerning an earlier version of Section 1963(a)(1) (*Senate Hearings*, *supra*, at 407 (emphasis added)):

> It is felt that this revival of the concept of forfeiture as a criminal penalty, *limited as it is in Section 1963(a) to one's interest in the enterprise which is the subject of the specific offense involved here*, and not extending to any other property of the convicted offender, is a matter of Congressional wisdom rather than of constitutional power.[23]

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[23] The courts have upheld the constitutionality of RICO's in personam forfeiture approach. See *United States* v. *Grande*, 620 F.2d 1026, 1039 (4th Cir.), cert. denied, 449 U.S. 919

The court below correctly concluded that this letter did not indicate a congressional intent to preclude forfeiture of racketeering profits. The sentence at issue did not refer to Section 1963(a) as finally enacted but to an earlier version in which forfeiture was expressly limited to interests in an enterprise. Thus, by stating that forfeiture under Section 1963(a) was "limited * * * to one's interest in the enterprise," the letter was merely following the language of the bill then pending. Moreover, the purpose of this sentence was not to explain what the statutory provision meant but to explain why the Department of Justice believed it was constitutional. Critics of the provision stated that it was akin to the ancient practice, long forbidden in this country, whereby all the property of a convicted felon was forfeited to the state.[24] See, *e.g.*, 116 Cong. Rec. 35205 (1970) (remarks of Rep. Mikva). Such laws contrasted with the numerous statutes of undoubted constitutionality authorizing the forfeiture of money received or property used in the commission of crime (see, *e.g.*, 18 U.S.C. 3612 (bribe money); 18 U.S.C. 3615 (vehicles and vessels used for illegal transportation of alcohol)). See J.A. 106-107.

The crux of the constitutional objection to the RICO forfeiture provision appears to have been that it could result in the loss of property interests not derived from or customarily used in criminal activity. As

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(1980); *United States* v. *Huber*, *supra*, 603 F.2d at 397; *United States* v. *Thevis*, *supra*, 474 F. Supp. at 141.

[24] See U.S. Const. Art. III, § 3, cl. 2 ("[N]o Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted."); Act of Apr. 30, 1790, ch. 9, 1 Stat. 117, § 24 (codified at 18 U.S.C. 3563) ("[N]o conviction or judgment * * * shall work corruption of blood, or any forfeiture of estate.").

Representative Mikva put it (116 Cong. Rec. 35205 (1970); emphasis added):

> Under this bill, if you are engaged in two acts of gambling * * * and you are engaged in an interstate business or any business that affects interstate commerce * * * *they take your business away* * * *.

Responding to this objection, Mr. Kleindienst wrote that the RICO forfeiture provision was constitutional because it did not require the defendant to forfeit all interests in any enterprise but was "limited * * * to [the] interest in the enterprise which is the subject of the specific offense" for which he was convicted (*Senate Hearings*, *supra*, at 407). Thus, not only is it unreasonable to interpret the Kleindienst letter as an explanation of what the final version of Section 1963(a)(1) means, it is equally unreasonable to interpret that letter to mean that constitutional problems would arise if Congress provided for the forfeiture of interests other than interests in an enterprise. On the contrary, since racketeering profits derive directly from illegal activity, forfeiture of such interests is not subject to the same objection as forfeiture of an interest in a legitimate business.

Acknowledging that the Kleindienst letter related to a differently worded statute, petitioner nonetheless argues (Br. 15) that its inclusion in the Senate Report on the final forfeiture provision "indicates Congress's understanding and intent in passing the [existing] RICO forfeiture provisions." As the court below observed, however, the reprinting of the letter in the final report is of no significance for present purposes. "[N]othing in the report suggests that the letter provides a technical commentary on the scope of each section of the expanded bill" (J.A. 94). The

portion of the letter upon which petitioner relies remained relevant despite the amendment of the forfeiture provision because it discussed the constitutionality of requiring the forfeiture of interests in an enterprise, a feature that was of course retained in the bill's final version (*ibid.*; *House Hearings*, *supra*, at 171).

D. The Rule of Lenity Is Not Applicable in This Case

Petitioner contends (Br. 6) that the rule of lenity requires that 18 U.S.C. 1963(a)(1) be construed narrowly to reach only interests in an enterprise and not profits and proceeds derived from racketeering. "Although this principle of construction applies to sentencing as well as substantive provisions" (*United States* v. *Batchelder*, 442 U.S. 114, 121 (1979)), it has no application in the present case.

Under the rule of lenity, ambiguously worded criminal statutes must be "strictly construed" if the legislative history does not reveal Congress's intent. A nonconstitutional rule of statutory interpretation (*Rewis* v. *United States*, 401 U.S. 808, 811 n.5 (1971)), the rule of lenity " 'serves as an aid for resolving an ambiguity; it is not used to beget one * * *. The rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers.' " *Turkette*, *supra*, 452 U.S. at 587-588 n.10, quoting *Callanan* v. *United States*, 364 U.S. 587, 596 (1961).

Here, as we have demonstrated, the language of the RICO forfeiture provision is clear. The literal language of Section 1963(a)(1) requires forfeiture of "any interest [the convicted racketeer] has acquired or maintained in violation of section 1962." It does not limit forfeitures to interests in an enterprise.

Similarly, the legislative history unmistakably evidences Congress's intent to strike at organized crime's economic base by divesting convicted racketeers of their ill-gotten gain. And as we have showed above, while Congress was also interested in removing racketeers from controlling positions in infiltrated businesses, that was certainly not its sole interest, as petitioner seems to suggest. Thus, since the meaning of Section 1963(a)(1) is not ambiguous, the application of a rule of lenity would be inappropriate here.

Finally, application of "this rule of narrow construction" (*Huddleston* v. *United States*, 415 U.S. 814, 831 (1974)) would be inconsistent with Congress's direction that the RICO statute "be liberally construed to effectuate its remedial purpose" (84 Stat. 947, 18 U.S.C. 1961 note). RICO's broad "remedial purpose" is "the eradication of organized crime * * * by providing enhanced sanctions and new remedies * * *" (84 Stat. 923). Applying the rule of lenity and thereby preventing the forfeiture of racketeering profits would contravene this unequivocal congressional directive.[26]

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[26] We note, moreover, that petitioner unquestionably had "fair warning * * * as to what conduct is * * * punishable by deprivation of liberty or property" (*Huddleston* v. *United States*, *supra*, 415 U.S. at 831). Petitioner's racketeering conviction has been sustained on appeal, and petitioner certainly may not assert that he relied upon a belief that he was entitled to keep the fruits of his illegal activity. Section 1964(c) provides that "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." That provision plainly confers upon the defrauded insurance company the right to recover the amounts paid to petitioner on the fraudulent insurance claims. Furthermore, even without

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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that statute, petitioner could not have reasonably expected to keep the fraudulently obtained insurance proceeds if his crime was exposed and established. See *Restatement of Restitution* § 1 (1937); cf. *Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U.S. 251, 264-265 (1946).

APPENDIX

18 U.S.C. 1962 provides:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged

in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

18 U.S.C. 1963 provides:

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established[,] operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

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